

106TH CONGRESS  
1ST SESSION

# S. 550

To provide for the collection of certain State taxes from an individual who is not a member of an Indian tribe.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4, 1999

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide for the collection of certain State taxes from an individual who is not a member of an Indian tribe.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “State Excise, Sales,  
5       and Transaction Tax Enforcement Act of 1999”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) through a long line of decisions, the United  
9       States Supreme Court has established that States  
10       have the right to collect lawfully imposed non-

1 discriminatory State excise, sales, and transaction  
 2 taxes on the purchase of a good or service from an  
 3 Indian tribe (including a tribal government or tribal  
 4 corporation) by a person who is not a member of  
 5 that Indian tribe;

6 (2) the collection of those State taxes has been  
 7 impeded by the assertion of tribal immunity by In-  
 8 dian tribes (including tribal governments and tribal  
 9 corporations) and members of Indian tribes as a de-  
 10 fense in Federal actions in Federal courts; and

11 (3) the failure of an Indian tribe (including a  
 12 tribal government or tribal corporation) or a member  
 13 of an Indian tribe to act as an agent of a State to  
 14 collect such a State tax—

15 (A) unlawfully deprives that State of es-  
 16 sential tax revenues needed for making im-  
 17 provements to infrastructure and ensuring the  
 18 health and welfare of all of the citizens of that  
 19 State; and

20 (B)(i) creates a disadvantage for law-abid-  
 21 ing businesses that are not associated with the  
 22 Indian tribe and that fulfill an obligation to act  
 23 as an agent of the State; and

1 (ii) as a result of that disadvantage, some  
 2 of those businesses may be forced out of busi-  
 3 ness.

4 **SEC. 3. COLLECTION OF STATE TAXES.**

5 Section 1362 of title 28, United States Code, is  
 6 amended—

7 (1) by inserting “(a) IN GENERAL.—” before  
 8 “The district courts”; and

9 (2) by adding at the end the following:

10 “(b) COLLECTION OF QUALIFIED STATE TAXES BY  
 11 INDIAN TRIBES.—

12 “(1) DEFINITIONS.—In this subsection:

13 “(A) GOOD OR SERVICE.—The term ‘good  
 14 or service’ includes any tobacco product or  
 15 motor fuel (within the meaning of the Internal  
 16 Revenue Code of 1986).

17 “(B) INDIAN TRIBE.—The term ‘Indian  
 18 tribe’ means—

19 “(i) an Indian tribe or band referred  
 20 to in subsection (a); and

21 “(ii) any governing body or tribal cor-  
 22 poration of such a tribe or band.

23 “(C) QUALIFIED STATE TAX.—

24 “(i) IN GENERAL.—The term ‘quali-  
 25 fied State tax’ means any lawfully im-

1 posed, nondiscriminatory excise, sales, or  
2 transaction tax imposed by a State on a  
3 purchase of a good or service from a tribal  
4 retail enterprise by a person who is not a  
5 member of the Indian tribe that is (or with  
6 respect to which a member is) the owner  
7 or operator of the tribal retail enterprise.

8 “(ii) EXCEPTIONS.—The term does  
9 not include any State tax otherwise de-  
10 scribed in clause (i) if—

11 “(I) as of the date of enactment  
12 of the State Excise, Sales, and Trans-  
13 action Tax Enforcement Act of 1999,  
14 the tribal retail enterprise is exempted  
15 under the law of that State from col-  
16 lecting and remitting that tax because  
17 the Indian tribe associated with that  
18 tribal retail enterprise imposes and  
19 collects an equivalent tax on such sale  
20 in an amount equal to the tax that  
21 would otherwise be imposed by the  
22 State;

23 “(II) as of the date of enactment  
24 of the State Excise, Sales, and Trans-  
25 action Tax Enforcement Act of 1999,

1 the State has waived the applicability  
2 of that tax to the purchase of a good  
3 or service from that tribal retail enter-  
4 prise by a person who is not a mem-  
5 ber of the Indian tribe that is (or with  
6 respect to which a member is) the  
7 owner or operator of the tribal retail  
8 enterprise;

9 “(III) as of the date of enact-  
10 ment of the State Excise, Sales, and  
11 Transaction Tax Enforcement Act of  
12 1999, the tax is the subject of an  
13 agreement between a tribal retail en-  
14 terprise and a State that exempts that  
15 tribal retail enterprise from collecting  
16 and remitting that tax; or

17 “(IV) the incidence of the tax  
18 falls on an Indian tribe or member of  
19 an Indian tribe.

20 “(D) TRIBAL IMMUNITY.—The term ‘tribal  
21 immunity’ means the immunity of an Indian  
22 tribe from jurisdiction of the Federal courts, ju-  
23 dicial review of an action of that Indian tribe,  
24 or any other remedy.

1           “(E) TRIBAL RETAIL ENTERPRISE.—The  
2           term ‘tribal retail enterprise’ includes any entity  
3           that—

4                   “(i) is owned or operated by an In-  
5                   dian tribe or member of an Indian tribe;  
6                   and

7                   “(ii) engages in the business of the  
8                   wholesale or retail sales of a good or serv-  
9                   ice.

10           “(2) COLLECTION OF QUALIFIED STATE  
11           TAXES.—The owner or operator of a tribal retail en-  
12           terprise shall collect and remit applicable qualified  
13           State taxes.

14           “(3) CONFLICT RESOLUTION.—

15                   “(A) DECLARATORY JUDGMENTS.—A  
16                   State may bring an action for a declaratory  
17                   judgment under section 2201 in a district court  
18                   of appropriate jurisdiction concerning the appli-  
19                   cability or lawfulness of a qualified State tax.

20                   “(B) ACTIONS.—A State may bring an ac-  
21                   tion against a tribal retail enterprise or the In-  
22                   dian tribe or member of an Indian tribe that  
23                   owns or operates the tribal retail enterprise in  
24                   a district court of appropriate jurisdiction to

1           enforce the collection or remittance of a quali-  
2           fied State tax under paragraph (2).

3           “(C) WAIVER OF TRIBAL IMMUNITY.—In  
4           an action referred to in subparagraph (A) or  
5           (B), to the extent necessary to obtain a judg-  
6           ment in that action, the tribal immunity of the  
7           Indian tribe is waived.”.

8   **SEC. 4. APPLICABILITY.**

9           The amendments made by section 3 shall apply to  
10          sales of goods or services referred to in section 1362(b)  
11          of title 28, United States Code, as added by section 3,  
12          that are made after the date of enactment of this Act.

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